

**Amendments to the Drawings:**

Amendments were made to the drawings to correct typos. No new matter was added. The word “operations” in Figure 4 was replaced with the word “operating”. Figure 3 was amended to designate it as “Prior Art”. Annotated and replacement drawing sheets are submitted with this response. No new matter has been added.

Attachment: 2 Replacement Sheets  
2Annotated Sheets Showing Changes

## **REMARKS/ARGUMENTS**

Claims 1-3 and 12-20 are pending in the present application. Claims 4-11 have been canceled. Claims 1-3, 12-14, 16, 17, 19, and 20 have been amended. Claims 21-23 have been added. Applicants are not conceding in this application that the subject matter of the canceled claims and the claims prior to their amendment are not patentable over the prior art cited by the examiner. The present claim cancellations and amendments are only for facilitating expeditious prosecution to obtain allowance of the subject matter in the present claims. Applicants respectfully reserve the right to pursue the subject matter in claims in their form prior to these amendments in one or more continuations and/or divisional patent applications.

Claims 1-3, 12-14, 16-17, and 19-20 have been amended. Some of the amendments include a feature in which determining of logical partition usage information for hardware resources used by the logical partition is performed by a hardware usage monitor. Support for this feature in claim 1 in the specification can be found on page 6, line 29; page 7, line 30; page 8, lines 4-7; page 8, lines 22-28; page 9, lines 1-7; page 9, line 29; and page 10, line 6.

New claims have been added to the application. No new matter has been introduced in these new claims. Support for new claim 21 is found on page 8, lines 22-28. Support for new claim 22 can be found on page 13, lines 17-18. Support for new claim 23 is in the flowchart in Figure 10 and in the specification on page 13, lines 6 – page 14, line 25.

The citation of this support is only some examples of support that may be found in the specification and not meant to limit the invention to particular examples in the cited sections. Reconsideration of the claims is respectfully requested. No new matter has been added by these amendments.

Amendments were made to the specification to correct errors and to clarify the specification. No new matter has been added by any of the amendments to the specification.

Amendments were made to the drawings to correct errors and to clarify the drawings. No new matter has been added by any of the amendments to the drawings.

### **I. Objections to Drawings**

With respect to the drawings, the Examiner stated that the drawings were not acceptable because Figure 1 should have “system operating system” instead of “systems operations system”. A proposed Figure 1 has been submitted for inclusion in the application.

The Examiner stated the drawings were not acceptable because Figure 3 should be designated by a legend such as “Prior Art” as stated by the specification because only that which is old is illustrated. A proposed Figure 3 has been submitted for inclusion in the application. Thus, this objection is overcome.

## **II. Objections to Specification**

The Examiner rejected the abstract of Applicants’ specification because the abstract exceeds the recommended length of 150 words. Applicants amended the specification accordingly, thereby overcoming this objection.

The Examiner rejected the specification because the specification failed to provide antecedent basis for the terminology “computer readable medium.” Applicants amended the specification in response to the Examiner’s comments. Accordingly, the objection is believed to have been overcome.

The Examiner rejected the specification because the specification failed to “comply with 37 CFR 1.77(b) and omission of labeling background of the invention section.” Applicants amended the specification in response to the Examiner’s comments. Thus, the rejection is believed to have been overcome.

## **III. 35 U.S.C. § 101**

The Examiner has rejected claims 4-7 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is moot because these claims have been cancelled.

## **IV. 35 U.S.C. § 112, Second Paragraph**

The Examiner has rejected claims 1-20 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which Applicants regard as the invention.

Claims 4-11 have been cancelled. The rejection of these claims is moot. Only the pending claims are addressed.

### **A. Antecedent basis.**

The Examiner rejected claims 1-3, 7, 11, 16, and 19 as indefinite under 35 U.S.C. § 112, second paragraph. The Examiner asserts that insufficient antecedent basis exists. 1-3, 7, 16, and 19 have been amended to provide antecedent basis for these claims.

The Examiner has made a number of rejections stating that it is not clear where something is located or how something is done. These types of rejections are not proper rejections under 25 U.S.C., second paragraph as stated by the M.P.E.P as follows:

## 2173.04 Breadth Is Not Indefiniteness

Breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.

Undue breadth of the claim may be addressed under different statutory provisions, depending on the reasons for concluding that the claim is too broad. If the claim is too broad because it does not set forth that which applicants regard as their invention as evidenced by statements outside of the application as filed, a rejection under 35 U.S.C. 112, second paragraph, would be appropriate. If the claim is too broad because it is not supported by the original description or by an enabling disclosure, a rejection under 35 U.S.C. 112, first paragraph, would be appropriate. If the claim is too broad because it reads on the prior art, a rejection under either 35 U.S.C. 102 or 103 would be appropriate.

The claims are also not required to explain how the invention is performed or enable the invention.

### B. Claim 1

The Examiner rejected claim 1 as indefinite under 35 U.S.C. § 112, second paragraph.

Specifically, the Examiner states that:

As per claim 1, line 1, it is not clearly understood of what is "LPAR" abbreviated?

Office Action dated May 30, 2008, page 6.

Claim 1 has been amended to provide the full phrase for the acronym as set out in the specification. There, the rejection of the claim on this basis has been overcome.

Additionally, the Examiner stated:

Line 3, it is unclear where does "a guest operating system" reside? (i.e. it resides on the LPAR or somewhere else). It is unclear whether there is a host operating system, since there is a guest operating and where does it reside?

Office Action dated May 30, 2008, page 6.

Amended claim 1 reads as follows:

1. A method for determining an amount of usage of applications in a logical partition in a computer system and a bill for such usage, said method comprising:
  - executing a guest operating system in said logical partition;
  - said guest operating system dispatching a plurality of applications in said logical partition;
  - said guest operating system or other program executing in said logical partition determining information indicative of an amount of usage of each of said applications;
  - determining, by a hardware usage monitor, logical partition usage information for hardware resources used by the logical partition;
  - based on said information, reporting said amount of usage of each of said applications to a billing function; and

said billing function determining a bill for each of said applications based on said amount of usage of each of said applications and said logical partition usage of hardware resources.

Under 35 U.S.C. § 112, second paragraph: “The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.”

In claim 1, it is clear that the guest operating system is executing in said logical partition. It is also clear what steps or functions are provided by the guest operating system in claim 1 with the current language. It does not matter where the guest operating system resides if this term has a meaning that may be broader than where the guest operating system is executing. This statement has nothing to do with whether one of ordinary skill in the art would understand the language of claim 1. It is not the purpose of the claims to explain and teach how to use and/or implement the invention. The claims are only supposed to state what the subject matter regarded to be the invention.

The Examiner is not complaining about whether words are unclear or not defined. The Examiner also is not complaining about indefinite language. Instead, the Examiner is asking about where components reside in a method claim. This type of question is not a proper rejection under 35 U.S.C § 112, second paragraph. If the Examiner is concerned about the breadth, this section of 35 U.S.C. § 112 is an inappropriate section for such rejection.

Additionally, claim 1 does not recite the use of a “host operating system”. Whether one is present and where it might reside is not part of the claimed invention in claim 1. The Examiner’s questions are about how things work that are not recited in the claims. Therefore, a rejection under this clause of 35 U.S.C. § 112 has not been stated with respect to claim 1.

Additionally, the Examiner states that:

Line 7, it is unclear who is reporting an amount of usage of each of said applications to a billing function? Lines 7- 8, it is not clearly understood what is considered “a billing function”? and what does it consist of?

Office Action dated May 30, 2008, page 6.

Claim 1 is related to a method where an element of the method is “reporting an amount of usage of each of said applications to a billing function.” No requirement is present to point out exactly “who” or “what” executes a given step or element in a method claim. This step and how it is performed is clear.

In summary, the basis for these rejections seems more like the Examiner believes that the claims are too broad, which is a rejection based on breadth. This type of rejection can be addressed only as a 35 U.S.C. § 112, first paragraph rejection or a rejection based on art.

**C. Claim 2**

The Examiner rejected claim 2 as indefinite under 35 U.S.C. § 112, second paragraph. Specifically, the Examiner states that:

As per claim 2, lines 1-2, it is not clearly understood whether "an amount of usage" is the same as "an amount of usage" referred to in claim 1? ( i.e. if it is the same, it should be referred to as said amount of usage).

Office Action dated May 30, 2008, page 6.

In response, claim 2 has been amended to clarify the claim.

Additionally, the Examiner states that:

It is unclear how the determination of an amount of usage of each application based on OS determination? (i.e. does it simply read what the OS recorded of each application usage?).

Office Action dated May 30, 2008, page 6.

Again the scope of this claim is clear. How the determination of an amount of usage is performed is not the subject matter of this particular claim and cannot be required to be added.

**D. Claim 3**

The Examiner rejected claim 3 as indefinite under 35 U.S.C. § 112, second paragraph. Specifically, the Examiner states that:

As per claim 3, line 2, it is unclear what is considered "system data" and does application usage consider one of the system data?

Office Action dated May 30, 2008, page 6.

In response to the Examiner's rejection, claim 36 has been amended to make it clear that the amount of usage of said logical partition is made without using application usage information generated by said guest operating system. The application usage is part of the information indicative of said amount of usage of each of said application in claim 1 when claim 3 is read with using antecedent basis rules for claim interpretation.

**E. Claim 12**

In claim 12, the questions about where a guest operating system resides and whether a host operating system is present are improper rejections under 35 U.S.C. § 112, second paragraph for the same reasons stated above with respect to claim 1.

**F. Claim 14**

The Examiner rejected claim 14 as indefinite under 35 U.S.C. § 112, second paragraph. The Examiner stated that it was not clear what the term "same" referred to in this claim. In response to the Examiner's comments, claim 14 has been amended to clarify the claim.

#### **G. Claim 16**

In response to the Examiner's rejection, claim 16 has been amended to make it clear that the amount of usage of said logical partition is made without using application usage information generated by said guest operating system. The application usage is part of the information indicative of said amount of usage of each of said application in claim 12 when claim 16 is read with using antecedent basis rules for claim interpretation.

#### **H. Claim 19**

In claim 19, questions about where a guest operating system resides and whether a host operating system is present are improper rejections under 35 U.S.C. § 112, second paragraph for the same reasons stated above.

Therefore, based on the amendments and/or reasons stated above, the rejection of claims 1-3 and 12-20 under 35 U.S.C. § 112, second paragraph has been overcome. The rejections of claims 4-11 are moot because the claims have been cancelled.

### **V. 35 U.S.C. § 103, Obviousness**

#### **A. Claims 4, 6, 8, and 10**

The Examiner has rejected claims 4, 6, 8, and 10 under 35 U.S.C. § 103 as being obvious over *Heath et al*, Management Facility for Server Entry and Application Utilization in a Multi-node Server Configuration, US 5,553,239 (September, 3, 1996), (hereinafter "Heath"), in view of Applicant admitted prior art (AAPA). The rejection of this claim is moot because these claims have been cancelled.

#### **B. Claims 1-3, 5, 7, 9, and 11**

The Examiner has rejected claims 1-3, 5, 7, 9, and 11 under 35 U.S.C. § 103(a) as being unpatentable over *Heath, et al*, U.S. Patent No. 5, 553,239 ("Heath") in view of Applicant admitted prior art (AAPA), and further in view of *Smith, et al*, "application service provider model implementation on the series server", IBM Redbooks, 2001, pp. 1-259 ("Smith"). The rejection of claims 5, 7, 9, and 11 are moot because these claims have been cancelled. As amended, claim 1 reads as follows:

1. A method for determining an amount of usage of applications in a logical partition in a computer system and a bill for such usage, said method comprising:
  - executing a guest operating system in said logical partition;
  - said guest operating system dispatching a plurality of applications in said logical partition;
  - said guest operating system or other program executing in said logical partition determining information indicative of an amount of usage of each of said applications;
  - determining, by a hardware usage monitor, logical partition usage information for hardware resources used by the logical partition;
  - based on said information, reporting said amount of usage of each of said applications to a billing function; and

said billing function determining a bill for each of said applications based on said amount of usage of each of said applications and said logical partition usage of hardware resources.

Amended claim 1 includes additional features not taught or suggested by *Heath*, *AAPA*, and *Smith*, alone or in combination. For example, none of these references teach or suggest obtaining both information indicative of an amount of usage of each of a plurality of applications dispatched by guest operating system in a logical partition and logical partition usage information for hardware resources used by the logical partition. Further, none of the references alone or in combination teach using the guest operating system to obtain the information and a hardware usage monitor to obtain the logical partition information such that this information may be used by a billing function to determine a bill based on the amount of usage of each of the applications and the logical partition usage information for hardware resources used by the logical partition.

Claims 2 and 3 are dependent claims depending from independent claim 1. These claims are patentable over the cited references for the same reasons as claim 1. Further, these claims also include other features not taught or suggested by the cited references.

Therefore, the rejection of claims 1-3, 5, 7, 9, and 11 as being obvious over *Heath* in view of *AAPA* and *Smith* have been overcome.

### **C. Claims 12-20**

The Examiner has rejected claims 12-20 under 35 U.S.C. § 103(a) as being unpatentable over *Heath* in view of *AAPA*, in further view of *Smith*, and in view of *Vessey, et al.*, U.S. 2003/0037178.

#### **1. Claims 12-18**

Independent claim 12 has been amended to include the new features in independent claim 1. Thus, independent claim 12 is patentable over the cited references for the same reasons. Claims 13-18 are dependent claims depending from claim 12. These claims are patentable over the cited art for the same reasons as claim 12. Further, these claims include other additional features not taught or suggested by the other references alone or in combination.

#### **2. Claims 19-20**

##### **a. The Examiner bears the burden of establishing a *prima facie* case of obviousness.**

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). The prior art reference (or references when combined) must teach or suggest all the claim



limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In determining obviousness, the scope and content of the prior art are... determined; differences between the prior art and the claims at issue are... ascertained; and the level of ordinary skill in the pertinent art resolved.

Against this background the obviousness or non-obviousness of the subject matter is determined. *Graham v. John Deere Co.*, 383 U.S. 1 (1966). “Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” *KSR Int’l. Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007). “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).”

In this case, the Examiner has failed to meet the required burden. The cited references do not teach all of the features as believed by the Examiner. Thus, any combination of these references cannot reach the presently claimed invention for the claims on appeal. The Examiner also has not given sufficient articulated reasoning with rational underpinnings as to why the cited references would be combined and modified in the manner in which the Examiner proposes. Also, the modifications and combinations proposed by the Examiner would not be made when the references are considered as a whole by one of ordinary skill in the art. These and other reasons are described below in more detail.

#### **b. An explicit analysis must be provided in an obviousness rejection**

In combining references, an explicit analysis is required to combine or modify references. The Supreme Court has stated the following:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006). [R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

*KSR Int’l v. Teleflex Inc.* 500 U.S.\_\_\_\_, page 14 (2007). Conclusory statements are insufficient to support obviousness rejections.

In the Office Action, the Examiner stated the following for combining and modifying the cited references:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Heath, Vessey, AAPA and Smith because Smith teaching of writing usage information to shared storage and determining an amount of usage of said LPAR based on system data, without using application usage information generated by said guest operating system would improve system accuracy and efficiency since the billing is more accurate since application usage information is pulled directly from the private storage of the LPAR to the shared storage which prevent any alteration to the information and by having a system usage monitoring of each LPAR, it improve system efficiency and security for error proof usage billing.

Office Action dated May 30, 2008, page 29.

This statement does not provide any express analysis for combining and modifying the references in the manner suggested by the Examiner. The statements made by the Examiner do not provide reasons as required in the Supreme Court Guidance on combining references in the *KSR* case. Instead, the Examiner has only provided general statements that are conclusory or reciting some desired goal. These conclusions and desired goals have not been supported with any explicit analysis or articulated reasoning with some rational underpinning to support the conclusion or goals for combining and modifying the cited references in the manner proposed by the Examiner.

The Examiner has merely offered a goal or desire to improve system efficiency and accuracy in the measured amount of applications. The Examiner, however, has not gone beyond this conclusion or desired goal to explain what the required sufficiency as stated by the Supreme Court as to why one of ordinary skill in the art would have combined these references. The use of a goal such as improved efficiency and accuracy is not a sufficient reason and does not reach the level of an express analysis or articulated reasoning with some rational underpinning to support the conclusion.

After combining the references, the Examiner states the following to modify the combination:

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to conclude that by summing each application usage, the total usage of all of said applications in said LPAR based on said information from said shared storage is obtained and it would have been obvious to compare said total usage of all of said applications to an amount of usage of said LPAR based on said system data, to charge based on said amount of usage of said applications which would improve system efficiency and accuracy by validating the accuracy of the measured amount of usage of all application against another metering maintained by the system to verify the accuracy of the calculated usage before initiating the billing.

Office Action dated May 30, 2008, pages 29-30.

After combining references without the proper support, the Examiner goes on to make modifications of the combination with the same type of conclusory goals or desires. The Examiner has not provided any express analysis for modifying the references in the manner suggested. The statements

made by the Examiner in this section also do not provide the reasons as required in the Supreme Court Guidance in the *KSR* case. Again, the Examiner has only provided statements that are conclusory or citing some desired goal. Modifying a reference to include a step to compare the total usage of the applications to amount of usage of the logical partition to make a charge based on the total usage of the application has only been supported by the statement of a goal to improve system efficiency and accuracy. Nowhere has the Examiner provided the analysis needed to make these modifications.

For example, the Examiner has not explained why features within *Heath* would be used in a billing system. In particular, the Examiner has not explained why the usage of all applications and an amount of usage of a logical partition would be made citing the amount of usage of the application. The Examiner has not explained as to why certain features or teachings in *Heath* would be combined or modified with features from the other references. Although the Examiner is not required to necessarily point out a teaching or suggestion in the cited reference, the Examiner still has to provide an analysis as to why components in one reference may be used and/or modified with components in another reference when viewed by one of ordinary skill in the art.

**c. The proposed modification of the cited references would not be made when they are considered as a whole**

"It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *In re Hedges*, 228 U.S.P.Q. 685, 687 (Fed. Cir. 1986). One of ordinary skill in the art would not combine and modify *Heath*, *Vessey*, *AAPA*, and *Smith* in the manner proposed by the Examiner when these references are considered as a whole for what they teach. The references have great differences between each other when viewed by one of ordinary skill in the art.

*Heath* is directed towards the following:

Disclosed is a server architecture for connecting to a plurality of remote client computers each seeking access to applications resident on the server. The architecture provides (1) a reliable, single point of entry for client users that enforces security and recovers immediately from failures; (2) connection management that monitors the user's level of online activity, terminating inactive connections both to save system resources and to limit unnecessary connection charges to the user; (3) application management that spreads users optimally among active application instances, maintaining a pool of available applications, initiating new instances when the pool is low, and which records a user's utilization of different applications for billing purposes; (4) system integrity, which is achieved through division of transaction-management responsibility among the various interrelated components of the invention; and (5) continuous, uninterrupted operation. The invention distributes tasks to different functional modules in a manner that promotes

efficiency and ready accommodation of large numbers of users without processing delays.

*Heath*, abstract.

*Heath* also teaches:

The present invention provides an architecture offering (1) a reliable, single point of entry for client users that enforces security and recovers immediately from failures; (2) connection management that monitors the user's level of online activity, terminating inactive connections both to save system resources and to limit unnecessary connection charges to the user; (3) application management that spreads users optimally among active application instances, maintaining a pool of available applications, initiating new instances when the pool is low, and which records a user's utilization of different applications for billing purposes; (4) system integrity, which is achieved through division of transaction-management responsibility among the various interrelated components of the invention; and (5) continuous, uninterrupted operation. The general approach of the invention is to distribute tasks to different functional modules in a manner that promotes efficiency and ready accommodation of large numbers of users without processing delays.

*Heath*, column 11, lines 39-57.

As can be seen, *Heath* discloses an architecture for enforcing security and terminating inactive connections based on user online activity. Further, *Heath* discloses spreading users optimally among different application instances to achieve system integrity and continuous uninterrupted operation. *Heath* specifically states that the general approach is to distribute tasks in different functional modules to promote efficiency and accommodate large numbers of users without processing delays. Nowhere in this portion or in the portions of *Heath* is this cited reference concerned with comparing usage of a logical partition with application usage for billing purposes. Instead, *Heath* is directed towards insuring that efficient use of applications by client users occur.

*Vessey* discloses the following:

The present invention is directed to a system and method for emulating network communications between partitions of a computer system. The present invention allows applications in different partitions of a computer system to communicate using standard networking application programming interfaces, but without the need for an external network connection between the partitions. The present invention takes advantage of the shared memory resources of a partitionable computer system to emulate network communications through a region of memory shared by one or more partitions.

*Vessey*, U.S. 2003/0037178, paragraph 24. As can be seen, *Vessey* is directed towards allowing applications and different partitions to communicate with each other. When viewed by one of ordinary skill in the art, *Vessey* is concerned with communications between applications and different partitions.

*Smith* discloses the following:

This IBM Redbook shows you how to implement an exciting and new business model, called Application Service Provider (ASP), on the IBM @server iSeries server. ASP is the "how to" base for offering outsourced access to mission-critical applications on a subscription basis over the Internet, your intranet, or via a dedicated line. This Redbook explains how to implement the ASP business model on your iSeries server by extending the focus of other reference materials to include ASP and by including short configuration and programming examples.

*Smith*, page vii.

*Smith*, when viewed as a whole by one of ordinary skill in the art discloses information to implement an application service provider. *Vessey* provides 259 pages on implementing an application service provider. *AAPA* discloses tracking application usage in a logical partition.

When all of the references are considered as a whole by one of ordinary skill in the art, the differences between references are great. *Heath* is directed at managing remote computers seeking access on a server. *Vessey* is directed towards communications between applications and partitions. *Smith* is directed generally towards application service providers, and *AAPA* discloses tracking information about application usage and logical partition usage information.

Therefore, when viewed by one of ordinary skill in the art, these references are all directed towards vastly different subject areas and inventions. One of ordinary skill in the art would not be motivated to combine the references as proposed by the Examiner. Further, one of ordinary skill in the art also would not be motivated to modify the references to compare the total usage of all applications in the logical partition to the amount of usage of the logical partition to audit the amount of usage of the applications in the logical partition.

Thus, the rejection of claim 19 has been overcome. Claim 20 is a dependent claim depending from claim 19 and is patentable for the same reasons.

Therefore, the rejection of claims 12-20 under 35 U.S.C. § 103 has been overcome.

## **VI. New Claims 21-23**

New claims 21-23 have been added to the Application and are dependent claims from claim 19. These new claims include additional features not taught or suggested by the cited references. Thus, claim 21-23 are believed to be in a condition for allowance.

**VII. Conclusion**

It is respectfully urged that the subject application is patentable over *Heath* and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if, in the opinion of the Examiner, such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: September 2, 2008

Respectfully submitted,

/Duke W. Yee/

Duke W. Yee  
Reg. No. 34,285  
Yee & Associates, P.C.  
P.O. Box 802333  
Dallas, TX 75380  
(972) 385-8777  
Attorney for Applicants